

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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AMEREN SERVICES COMPANY, :

FIRSTENERGY CORPORATION, :

NORTHERN INDIANA PUBLIC SERVICE COMPANY, : Docket Nos.

NATIONAL GRID USA, AND : ER02-2233-001

MIDWEST INDEPENDENT TRANSMISSION : EC03-14-000

SYSTEM OPERATOR, INC.; AMERICAN ELECTRIC : ER03-242-000

POWER SERVICE CORPORATION; VIRGINIA : ER03-257-000

ELECTRIC AND POWER COMPANY; AMERICAN : ER03-262-000

ELECTRIC POWER SERVICE CORPORATION,, : ER03-263-000

COMMONWEALTH EDISON COMPANY AND : RT01-2-000

COMMONWEALTH EDISON COMPANY OF INDIANA, : RT01-98-000

INC.,; THE DAYTON POWER AND LIGHT : RT01-87-000

COMPANY,,; VIRGINIA ELECTRIC AND POWER : RT02-2-000

COMPANY, AND PJM INTERCONNECTION, L.L.C.; :

COMMONWEALTH EDISON COMPANY AND :

COMMONWEALTH EDISON COMPANY OF INDIANA, :

INC.; PJM INTERCONNECTION, L.L.C.; :

PJM INTERCONNECTION, L.L.C.; MIDWEST :

INDEPENDENT SYSTEM OPERATOR, INC.; :

STATE-FEDERAL REGIONAL RTO PANELS :

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Commissioners Library 11th Floor
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C.

Tuesday, January 14, 2003

The above-entitled matter came on for a
teleconference, pursuant to notice, at 10:03 a.m.

APPEARANCES:

Federal Energy Regulatory Commission:

Chairman Pat Wood, III

Commissioner Nora Mead Brownell

1 ADDITIONAL APPEARANCES:

2 Staff:

3 Rob Gramlich, Advisor, Office of the Chairman

4 Kevin A. Kelly, Director, Policy Innovation &
5 Communicaiton, OMTR

6 Cynthia Marlett, General Counsel

7 Michael Bardee, Office of General Counsel

8 Edward M. Meyers, Director of Sate Relations,
9 Office of External Affairs

10 Sara McKinley, State Relations, Office of
11 External Affairs

12 Deborah Schweikart, State Relations, Office of
13 External Affairs

14

15 Indiana Utility Regulatory Commission:

16 David Hadley, Commissioner

17 David Ziegner, Commissioner

18 Bob Pauley, Technical Staff

19 Brad Borum, Technical Staff

20 Karin Boychyn, Technical Staff

21

22 Illinois Commerce Commission:

23 Serhan Ogur, Economic Analyst

24

25 -- continued --

1 ADDITIONAL APPEARANCES:

2 Iowa Utilities Board:

3 William H. "Bill" Smith, Jr.

4

5 Kentucky Public Service Commission:

6 Martin J. Huelsmann, Chairman

7

8 Michigan Public Service Commission:

9 Laura Chappelle, Chairman

10 David Svanda, Commissioner

11 Robert Nelson, Commissioner

12 Mick Hiser, Staff

13

14 Missouri Public Service Commission:

15 Mike Proctor, Staff

16

17 Public Utilities Commission of Ohio:

18 Judy Jones, Commissioner

19 Kim Wissman, Staff

20

21 Tennessee Public Utility Commission:

22 Aster Rutibabalira, Staff

23

24 Virginia State Corporation Commission:

25 Hullihen Williams Moore, Commissioner

1 PROCEEDINGS

2 (10:03 a.m.)

3 MR. MEYERS: Welcome to the Midwest Regional
4 Panel Meeting. I'm Ed Meyers, FERC State Relations.

5 I want to thank everybody for calling in on such
6 short notice. This date seemed to work best for everybody,
7 plus, we sure want to be responsive to Indiana's request for
8 a process discussion.

9 We'll get into the issues in a minute. I would
10 like to first of all introduce people at the table, and ask
11 them to say their names. We'll go around the table here
12 first, starting with our Chairman.

13 CHAIRMAN WOOD: This is Pat Wood.

14 COMMISSIONER BROWNELL: Nora Brownell.

15 MS. MARLETTE: Cindy Marlette.

16 MR. KELLY: Kevin Kelly.

17 MR. BARDEE: Mike Bardee.

18 MR. CADDEN: Kevin Cadden.

19 MS. McKINLEY: Sarah McKinley.

20 MR. GRAMLICH: Rob Gramlich.

21 MS. SCHWEIKART: Deborah Schweikart.

22 MR. SPENCER: C.B. Spencer.

23 MR. MEYERS: All right, let's do a roll call of
24 the states, if we may:

25 Arkansas?

1 (No response.)

2 MR. MEYERS: No one from Arkansas.

3 Illinois?

4 (No response.)

5 MR. MEYERS: No one from Illinois, yet.

6 Indiana.

7 VOICES: They were on before.

8 MR. MEYERS: Oh, Illinois?

9 MR. OGUR: This is Sethan Ogur from IUC. And

10 Sherman Elliott was also on the line.

11 MR. MEYERS: All right. Indiana, please.

12 MR. HADLEY: Indiana is Commissioner David Hadley,

13 Commissioner David Pauley, Brad Borum, and Karen Boychyn.

14 MR. MEYERS: Thank you.

15 MR. EISEN: Also for Indiana, Washington counsel,

16 Eric Eisen.

17 MR. MEYERS: And Iowa, please?

18 MR. SMITH: Bill Smith, John Herbie, and Vernon

19 Jordan.

20 MR. MEYERS: Kansas?

21 (No response.)

22 MR. MEYERS: Michigan?

23 MR. NELSON: Yes, it's Commissioners Bob Nelson

24 and David Svanda, and then staff, Gary Kitts, Lisa Pappas,

25 Angie Butcher, Pat Barone, Mick Hiser and Janet Hanneman.

1 MR. MEYERS: Okay, Kentucky?

2 MR. HUELSMANN: Marty Huelsmann.

3 MR. MEYERS: Thank you.

4 Minnesota?

5 (No response.)

6 MR. MEYERS: Missouri?

7 (No response.)

8 MR. MEYERS: Nebraska?

9 VOICE: I thought Mike Proctor was on the line.

10 MR. MEYERS: Oh, okay.

11 CHAIRMAN WOOD: Mike's here?

12 MR. MEYERS: Do we have Mike Proctor from

13 Missouri?

14 (No response.)

15 MR. MEYERS: Well, he stepped out for a second

16 here.

17 Nebraska?

18 (No response.)

19 MR. MEYERS: Ohio?

20 MS. JONES: Yes, Commissioner Judy Jones, Dan

21 Karlack, John Whittis, Don Howard, and Kim Whitman.

22 MR. MEYERS: Thank you.

23 Oklahoma?

24 (No response.)

25 MR. MEYERS: South Dakota?

1 (No response.)

2 MR. MEYERS: North Dakota?

3 (No response.)

4 MR. MEYERS: And Texas?

5 (No response.)

6 MR. MEYERS: Wisconsin?

7 (No response.)

8 MR. MEYERS: Tennessee on the call?

9 MR. RUTIBABALIRA: This is Aster Rutibabalira

10 with the staff.

11 MR. MEYERS: Okay, thank you.

12 MR. MEYERS: Virginia?

13 MR. MOORE: This is Hulli Moore, member of the

14 Virginia Commission, and with me is Arlen Bolstead and

15 Howard Spinner of the Staff.

16 MR. MEYERS: And West Virginia?

17 MR. HITT: Good morning. My name is Rick Hitt,

18 and I'm the Commission's General Counsel.

19 MR. MEYERS: Okay, did I leave anybody out? Is

20 there anybody else here?

21 MR. PROCTOR: This is Mike Proctor from the

22 Missouri Commission.

23 MR. MEYERS: And welcome, Mike.

24 All right, we're going to start off. We'll see

25 if our Chairman and Commissioner Brownell have any opening

1 comments they would like to share with us.

2 CHAIRMAN WOOD: This is Pat Wood. I appreciate
3 Commissioner Hadley's request for a state-federal panel over
4 RTO matters which we have set up in our rules over a year
5 ago and have used productively ever since.

6 As you all know, today's conversation is being
7 transcribed by a Court Reporter, and the transcript of
8 today's discussion will be made available in the several
9 dockets that have been posted as potential dockets that we
10 may wander into, so that all parties have the opportunity to
11 know what we visited about as regulators.

12 I think it's real important for us as regulators
13 over the electric power industry, to continue to work
14 together as we have. We found that certainly our experience
15 with you all, Commissioners in the Midwest, actually was our
16 first state-federal conference call back in the Fall of
17 2001, and we appreciate, as always, the opportunity to work
18 collegially with you all on matters of interest to our
19 customers.

20 So I know Commission Hadley had a number of items
21 that were on his mind, and I think that without a whole lot
22 of ado, Nora, do you want to add anything?

23 COMMISSIONER BROWNELL: Simply, hello and welcome
24 to my colleagues. It's always good to talk to you, better
25 to see you, which we hope to do in February.

1 MR. MEYERS: We're going to take care of one
2 other item of business before we start with Dave. As the
3 Chair mentioned, we set up this process because of our
4 partnership with each other in the regulatory community, and
5 your strong leadership. And we want to provide this
6 opportunity, which was provided in November of 2001 in our
7 Order.

8 Judge Moore of Virginia has a statement that he
9 would like to make at this time. Judge Moore?

10 MR. MOORE: Thank you. My name is Hulli Moore,
11 and I'm a member of the Virginia Commission. I don't want
12 to appear to be non-appreciative of the effort to work for
13 this federal mission and the states to work together, but we
14 don't think it's appropriate in these cases.

15 The Virginia Commission has before it, the
16 application of Appalachian Power to transfer functional
17 control of its transmission facilities in Virginia to PJM,
18 and if Virginia Power wants to do the same thing, then it
19 also needs approval prior to the transfer.

20 In addition, under Virginia law, we are to
21 participate in proceedings at FERC concerning regional
22 transmission entities that may furnish transmission service
23 in Virginia.

24 The discussion today is noticed in a number of
25 FERC dockets, that include, among other things, the transfer

1 of control of Appalachian's transmission system to PJM.

2 The Commission will participate in these cases.

3 According to the Notice, the purpose of the meeting is for
4 you all to hold discussions with the Indiana Commission to
5 discuss the dockets related to RTO formation that are
6 currently pending. That includes the transfer of
7 Appalachian.

8 Your Notice also states that other state
9 commissions, including the Virginia Commission, may wish to
10 participate. The Notice further states that attendance at
11 the meeting is limited to the Commission, state
12 commissioners, and their respective staffs.

13 As the Chairman said, we understand that a
14 transcript will be placed in each docket, and I know that
15 the members of the Commission are responding to a state
16 request, and in that sense, we should appreciate it, and we
17 do.

18 Virginia, however, does not believe this
19 discussion, which bars participants, is appropriate. We
20 want to work with you, but we should not do this with
21 pending cases where only certain parties get to discuss
22 matters.

23 They are pending, the Commissions that have been
24 invited either are parties or are most like to become
25 parties. The Applicants and the other parties are barred

1 from attending this meeting, and it is my understanding that
2 they will only be allowed to read the transcript of what
3 occur today.

4 We are aware, as the Chair has stated, that the
5 Commission promulgated certain procedures to allow
6 discussions such as the one today. A rule such as this,
7 even if it is valid, should not be used in cases such as
8 these.

9 The Virginia Commission believes that a
10 discussion in these dockets that limits the participation of
11 anyone should not occur. Even limiting the discussion to
12 procedural matters or process is not enough.

13 All of these issues in these cases are
14 particularly important and everyone should be allowed to
15 participate. All matters concerning a pending case should
16 be open to all, not just to read about, but to read
17 firsthand, and to respond firsthand.

18 If I may say, today we, the states, are the
19 chosen ones, but tomorrow, you may decide it's appropriate
20 to listen to the Applicants, holding up the meeting for the
21 time being.

22 We ask that you not proceed in this matter, and
23 we respectfully state to you that we are unable to
24 participate. I thank you and I apologize if I have taken up
25 too much of your time.

1 MR. MEYERS: Thank you, Judge Moore. This matter
2 has been thoroughly researched, and we're going to get into
3 the meeting. We are very grateful for the opportunity to
4 talk with all of the state commissioners.

5 MR. MOORE: All right, thank you.

6 MR. MEYERS: Dave Hadley, Commissioner Hadley,
7 has requested this meeting, and he has a process issue that
8 he would like to frame up for us to start our discussion.
9 I'd like to call on Dave.

10 MR. HADLEY: Thank you very much for this
11 opportunity. We appreciate the effort to respond to us so
12 quickly, and to the Commissioners, for their presence, we
13 appreciate this.

14 The beginning for this conversation is limited by
15 the Indiana Commission's request simply to discuss the
16 process. And this opportunity arises from our understanding
17 of FERC rules.

18 Those rules, from our understanding, have been
19 challenged and are in good standing, and so we carefully do
20 not wish to go to the merits portion of this dialogue, but
21 simply to follow the FERC's rules which discuss the
22 opportunity or even the obligation of state commissions to
23 notify and develop the process of communication with our
24 federal counterparts, and equally as issues similar in
25 nature are opened before the Federal Commission, there is

1 some obligation to have a state dialogue.

2 There are numerous land mines that we all must be
3 very careful of and respectful of other positions in these
4 issues, and we certainly are mindful of that.

5 The purpose of this conversation is for us to
6 just be able to have a dialogue about process in the case
7 that's before us in Indiana as regulators, and one similar
8 in nature before the Federal Commission dealing with
9 transfer of assets.

10 There may be lessons learned in this experience
11 that will be instructive as we go forward in exploring other
12 ways that state commissions and the Federal Commission may
13 dialogue, leading up to even the development of RSCs.

14 But that's for another day. This conversation is
15 simply about the process in Indiana's case and the joint
16 FERC cases. We have not deemed, in the FERC cases, so this
17 is only our case.

18 Actually, I guess the simplest thing is just to
19 devise a process with which we can further communicate, and
20 in its simplest form, that's what we'd like to explore. So
21 we thank you for the opportunity to do that.

22 There are some issues that I guess we could throw
23 out for Chairman Wood and Commissioner Brownell, just the
24 ideas -- and interrupt any time, and make this a dialogue,
25 please.

1 I will suggest and call this a brain dump, a wish
2 list, an open thought process, if you will, of some
3 procedures only that we'd like to explore further.

4 Some of these, you may immediately think you can
5 do or you may immediately think you cannot do. And the same
6 would be true with us.

7 But rather than self-limiting ourselves, we
8 thought we would just explore some of the options and leave
9 decisions for what is doable for further consultation.

10 Would that type of procedure work for both of you
11 at this point?

12 CHAIRMAN WOOD: Yes.

13 COMMISSIONER BROWNELL: Yes.

14 MR. HADLEY: Some of the things that we would
15 like to be able to explore as a process, a systematic
16 process for sharing record information, ideas that are filed
17 with you guys in substantive pleadings, and likewise, those
18 things that might be filed with us.

19 We would be specifically careful of items that
20 are treated as confidential and must -- you know, what's the
21 protocol that we can establish to have that type of dialogue
22 and exchange.

23 Perhaps explore a protocol or at least a noticing
24 to each other of the timing of regulatory actions; different
25 events that may occur in either proceeding that would be

1 noteworthy or need to have dialogue; maybe even including
2 simultaneous hearings, which leads into the whole discussion
3 of what type of joint proceedings even would be possible or
4 advisable.

5 We would very much like to obtain standardized
6 language, as much as possible, that we could agree to on
7 process that might show respect for each other's
8 jurisdiction, requesting that timely receipt of approval of
9 other agencies be part of our expectations.

10 And so what type of processes could we ultimately
11 work together on? Where could there be procedural, and
12 where do we cut the line where it becomes merit and should
13 not be able to have that dialogue?

14 So, just an exploration of that type of mechanism
15 or procedures for both of our respective regulatory bodies
16 to communicate, without creating conflicts, may take
17 litigation or more time to dispel. If it isn't in either of
18 body's best interests or the people before us that have the
19 open dockets -- certainly the markets need to see
20 cooperation and follow-through in a way that doesn't create
21 undue delay.

22 Separate proceedings can sometimes be utilized
23 that way, either by design or just by accident, and so how
24 can we work to minimize that?

25 The issue of joint hearings, for example, could

1 be further discussion of is it possible that FERC could hold
2 an open hearing in these dockets in the Midwest and that we
3 find ways within each of our jurisdictions to be able to
4 accommodate such a hearing and incorporate the records into
5 our respective causes.

6 If those types of hearings are feasible, what
7 type of assistance is possible from the federal end to a
8 state to be able to participate in Washington, for example.

9 Perhaps thinking about electronic service issues
10 that FERC might be able to provide assistance, if that
11 becomes part of our procedure that we need to identify.

12 And then how can we each increase the
13 enforceability, for example, of our orders to where we reach
14 decisions in a favorable way to move the issues forward?

15 We look at all of these simply as starting points
16 that may or may not have merit or legality in either of our
17 jurisdictions and for us to explore how we develop that
18 process.

19 Certainly, federal laws, FERC rules, as well as
20 state laws and state rules are key to better understanding
21 each other's jurisdictional issues, and we'd just like to
22 start with that.

23 I would ask just for a brief time for our General
24 Counsel, who I have been having this dialogue with, to add a
25 few thoughts, if I maybe just left out some of the initial

1 ideas. Eric Eisen?

2 MR. EISEN: Well, I appreciate being promoted to
3 General Counsel.

4 (Laughter.)

5 MR. EISEN: But I'm Washington counsel. Let's
6 see, the one matter I wanted to add to that list was the
7 process for some standardized language in the decisions of
8 each agency, recognizing that there are proceedings
9 involving the same subject matter before other agencies, and
10 in some way acknowledging and respecting the proper
11 jurisdiction of the other agencies, so that you don't have a
12 race to see who goes first, but rather, you have an on-the-
13 record cooperation and recognition of the roles of the
14 respective agencies reaching resolution of a matter before
15 them.

16 That's the only thing I wish to add.

17 MR. MEYERS: All right, anyone here, first of
18 all?

19 (No response.)

20 MR. MEYERS: As Commissioner Hadley mentioned,
21 there's no way we're going to resolve anything right now,
22 but perhaps we could talk about a process that we could
23 establish to examine these issues as we go forward.

24 COMMISSIONER BROWNELL: It's Nora Brownell. What
25 about forming -- I even hesitate to say it because there are

1 more working groups as a result of electric restructuring
2 than any other single activity in America -- but I wonder if
3 it would be worthwhile to form a small working group of our
4 General Counsel, who is going to kick me under the table
5 now, and or her designee, and some general counsels from the
6 states?

7 I think Chuck Gray ought to designate somebody
8 from his staff, from NERUC to be involved to maybe explore
9 these issues.

10 David, I think it's a great idea. We're all
11 struggling. Judge Moore, I appreciate your concerns. I
12 think we're all struggling with regulatory models that
13 perhaps themselves did not envision the world as it works
14 today.

15 So I think it behooves us to kind of explore new
16 ways to be more effective.

17 We'll have to identify a timeline, obviously, to
18 do that. Cindy, did you want to add to that?

19 MS. MARLETTE: I just wanted to add that the
20 applications before us have asked us to act before March
21 1st, and we are, you know, proceeding, at least so far, with
22 the intent of trying to meet that request.

23 So, I think that we would need to do this as
24 quickly as possible in order to keep things moving.

25 COMMISSIONER BROWNELL: Is there a -- I'm handed

1 a note by Sarah. Is there a specific procedural issue with
2 the dockets Indiana brought forward that we need to clarify
3 today? Not necessarily that we can, but -- or is this the
4 concept, David, largely that you'd like to pursue these
5 different avenues to communicate?

6 MR. HADLEY: Well, first, Nora, we have these
7 instant cases before us, which under the federal law, the
8 Power Act, and your rules, opened up the legitimate
9 opportunity to have this dialogue.

10 So, we can restrict it to our instant cases, as
11 our first step, perhaps, and then broaden it to explore, you
12 know, broader issue going forward, as necessary.

13 But certainly this is just our request to start
14 this dialogue. We've accomplished a lot, just by laying
15 these issues on the table, and recognizing that we have
16 these types of issues procedurally that we must work
17 through.

18 COMMISSIONER BROWNELL: Does the small working
19 group concept appeal?

20 MR. MEYERS: Well, is there a roar of approval or
21 what?

22 (Laughter.)

23 MS. MARLETTE: Would it be beneficial for our
24 staff to come up with an initial document to address the
25 issues? I think we've all taken notes of the options that

1 you've talked about -- information sharing, possibly
2 simultaneous hearings, standardized language -- and come up
3 with at least a starting proposal that we could send to you?

4

5 MR. KELLY: This is Kevin Kelly. I was curious
6 as to whether the other states on the line felt that either
7 this was a desirable process, one that they wanted to
8 participate in, one that they could participate in under
9 their state laws?

10 MR. NELSON: Bob Nelson.

11 MR. MEYERS: Hi, Bob.

12 MR. NELSON: Just looking around our room, I
13 don't think the situation is where we could not participate
14 in such an activity, and it's a question of our resources
15 and whether we can devote them to this issue or a similar
16 issue that affects us.

17 I think that if it included other dockets like
18 the ones we've talked about last week, and it had some
19 interest to us, we would be more than happy to participate.

20

21 MS. MARLETTE: This is Cindy Marlette. One
22 caveat I have to throw out is that there are legal
23 restrictions on us, depending on whether the state
24 commission is or isn't a party here on some of these options
25 that have been mentioned, so that could affect who could

1 participate, or particularly with regard to information
2 sharing, how we might be able to coordinate with you.

3 MR. SMITH: This is Bill Smith from the Iowa
4 staff. This response is to issues that have been brewing
5 for at least ten years, in my recollection.

6 The first came up around a merger cases to Iowa's
7 attention in the early '90s. We attempted several different
8 ways to proceed into them.

9 One was to intervene. We became a party, we
10 became subject to the restrictions that Judge Moore
11 carefully laid out that apply to parties.

12 We considered approaching it as a non-party, and
13 that raised the problem of we were an outsider to the
14 docket; we didn't have notice of things. Our views weren't
15 welcome and weren't received as those of someone who had
16 cared enough to intervene.

17 So that was really a damned-if-you-do/damned-if-
18 you-don't situation. We even filed something called a
19 conditional intervention at one point, and everybody laughed
20 about that as a procedural way to get into these things.

21

22

23

24

25

1 I've seen this in the transfer of asset cases and
2 in the restructuring of the industry for transmission. I
3 suspect there will be other kinds of cases that come up also
4 in the future that bring up these questions.

5 So I think the question has an importance even
6 outside the restructuring question that presents it right
7 now, as important as those issues are. We can get into the
8 questions of timing and the reasons to go first, to go
9 second, the first commission gains a greater ability then to
10 try to represent those particular conclusions later. A
11 state commission is very much constrained prior to its own
12 decision, its representatives really don't have a position
13 to advocate. So the FERC loses the benefit of that if the
14 FERC tries to go faster than the state. Yet each commission
15 is under pressure to decide matters quickly and to respond
16 to the needs of the industry for rapid decisions.

17 On the other hand, the first commission to decide
18 may find that it wasted its time if the second commission
19 applies conditions or modifications or reaches a different
20 kind of a conclusion.

21 So I would suggest that perhaps the process that
22 Commissioner Brownell has suggested may be a useful way to
23 attack these problems, but whatever path we use, they are
24 very important and very long-term problems in the
25 relationship we have. I think we might want to start with

1 the question of whether we view ourselves as co-regulators
2 or whether FERC wants to view us as participants to matters
3 before FERC for decision.

4 Thanks.

5 COMMISSIONER BROWNELL: You're on the committee.

6 Thank you very much.

7 MR. MEYERS: This is Ed Meyers. Mr. Chairman,
8 did you have a comment?

9 CHAIRMAN WOOD: I just was curious since I wasn't
10 here. I mean, clearly these type of things come up or have
11 come up in the past when the FERC and the states have been
12 involved in mergers, multi-state entities that are merging.
13 And I wondered what our track record was in working together
14 there, because it seems like similar type processes where
15 you've got, you know, both regulators with some jurisdiction
16 over the entity seeking regulatory approval. How have we
17 dealt with that in the past, and does that have anything to
18 instruct us good or bad as to how we might proceed?

19 MS. MARLETTE: As far as I know, we've acted
20 independently. You've often had mergers that have involved
21 four or five states, the SEC and the FERC all having to give
22 independent approvals in order to make it go through. And
23 we have managed over the years to act independently, not
24 jointly, and avoid conflicts.

25 And I think what we're trying to seek here is as

1 these issues get more difficult is to explore new ways to do
2 it.

3 MR. MEYERS: And that was General Counsel Cindy
4 Marlette. I think we've more or less wrapped this up now.
5 We have a process that Commissioner Brownell has suggested.
6 And what I'd like to do is get an indication from the states
7 as to whether you'd like to join this working group. I
8 suppose you could e-mail me. Everyone probably has my e-
9 mail. But it's edward.meyers@ferc.gov. And we'll set this
10 up in a week or so.

11 So if you could express your indication of your
12 willingness to participate. And Cindy has indicated that
13 she would try to put a starting paper together as to
14 functions and the like, at least to get it started. And of
15 course we can kick that around further as we go in this
16 working group. Does that sound about right?

17 MR. EISEN: This is Eric Eisen with the IURC. My
18 concern is that whatever follow-up process we use here
19 expeditiously resolve the immediate concerns before the
20 IURC, which is how these two matters are going to be
21 coordinated when, as Cindy noted, applicants are seeking a
22 decision before March 1. So we have a very short timeframe
23 to move forward here. And I wonder if someone could address
24 whether they think that this can be accomplished in that
25 timeframe.

1 MS. MARLETTE: This is Cindy Marlette. I am
2 hopeful that it could be accomplished. We would propose to
3 get back to you. Mike Bardee, who is at this meeting, will
4 kick me.

5 (Laughter.)

6 MS. MARLETTE: But I think we could get back to
7 you before the end of the week with a proposal. Our goal
8 would be to act as expeditiously as we can because, as I
9 said previously, you know, we're very interested in seeing
10 things proceed efficiently in the Midwest, and we try when
11 we can to act within the timeframe sought by the applicants.

12 MR. EISEN: So what would we see at the end of
13 this week? Would it be a contact for counsels to get
14 together to discuss these matters with an agenda?

15 MS. MARLETTE: Well, I would hope something more
16 substantive than that. What I'd like to do, and I think
17 we've all been taking notes here, is put on paper and in
18 summary fashion, though, ways that we might share
19 information, what the restrictions are and whether we can or
20 can't, whether a joint hearing in the Midwest or here is or
21 isn't a viable option, what other options might be possible,
22 and just going through the --

23 I think another issue you all raised was
24 electronic service. Just coming back with some responses.
25 And I think some of these, like notifications, might be

1 fairly easy to say, well, yes, of course we can do that.

2 Others may be a little more difficult. But to actually come
3 up with some proposals.

4 MR. HADLEY: This is Commissioner Hadley again.
5 I only offered on behalf of the Indiana Commission that list
6 as an example of dialogue to be developed. We certainly
7 would welcome any other ideas that the Commissioners at FERC
8 or General Counsel have that you would like to offer of
9 abilities you may think of as you're thinking through that
10 list, as well as what other states may have to offer to help
11 move this process forward.

12 So we would anxiously be willing to wait for your
13 Friday response and see where the dialogue goes with
14 recommendations for the next step in how we foster this
15 communication between our state regulators and federal.

16 CHAIRMAN WOOD: All right. I would just offer,
17 because it's something, David, you had thrown out as an
18 idea, about the joint regional hearings.

19 We do have -- in fact it was Nan Thompson from
20 Alaska who when Nora and I first got here last summer
21 suggested that we have joint hearings because there are some
22 interstate/intrastate issues with oil pipeline regulation in
23 her state. And in fact, our ALJs and her ALJ are presiding
24 over that hearing actually here at FERC as we speak.

25 I think the intent there is to have a joint

1 record compiled. The judges will consult with each other,
2 but they do, as our laws require, have an independent
3 decision from each adjudicator at that point. Now of course
4 that's a much more lengthy process. The oil pipeline
5 regulation world is measured in years, not weeks. And so
6 that seems to be okay with the applicants.

7 But I don't know if that's a good model or not,
8 but it is one that we have begun to try here with the state
9 of Alaska, at their request. The verdict is still out if
10 that's effective or not.

11 But I just want to let you know we are open to
12 ideas that work to allow us all to stay tethered together as
13 opposed to screaming across the chasm. So appreciate the
14 opportunity, David, that you've given for us to continue to
15 develop that model here in the context of RTO oversight.

16 MS. WISSMAN: Mr. Chairman, can I ask a question
17 on that? Ohio has also requested --

18 MR. MEYERS: Identify yourself please.

19 MS. WISSMAN: This is Kim Wissman in Ohio. I'm
20 sorry. Ohio has requested joint processes in the past on
21 some interstate pipeline issues. This hearing that both the
22 state and the FERC ALJs are presiding over, is the
23 expectation that there will be a joint decision or is it
24 simply a joint hearing?

25 CHAIRMAN WOOD: It's a joint hearing. The judges

1 are encouraged to talk, but we do have our own -- they'll
2 have a proposal for a decision at their level, at the state
3 level, relating to the intrastate rate matters, and then
4 we'll do a proposal for decision on the interstate matters.

5 So they're actually slightly separate matters
6 that are required to have a decision as to different parts
7 of the pipeline's tariff.

8 I don't think they actually are drafting. I
9 might be wrong on that. I don't think, Kim, that they're
10 actually drafting and signing the same document.

11 MR. SVANDA: This is Dave Svanda. So the model
12 we would be trying to perfect here would be one where we
13 utilize each other's resources to develop the best knowledge
14 around whatever set of circumstances are presenting
15 themselves and then take that best knowledge back and kind
16 of on the assumption that it would be a collaborative sort
17 of decisionmaking process where we wouldn't end up with
18 radically different conclusions but instead as rational
19 people viewing the same information would be in pretty
20 similar step?

21 CHAIRMAN WOOD: I would hope so. I think, for
22 example, the Alaska bill, there's not a guarantee that the
23 decision that comes out of that would be actually 100
24 percent harmonized. But I think there's a high likelihood
25 that two people working together, i.e., the Administrative

1 Law Judges, on the same witnesses, the same hearing, the
2 same documents, would come out the same way.

3 But we didn't kind of preordain that outcome.

4 COMMISSIONER BROWNELL: It's been a wonderful,
5 efficient use of resources I think from both entities as
6 well. I think that's one of the big appeals for Nan.

7 MR. SVANDA: It seems like a very good goal --
8 this is Dave Svanda again. And I guess I was just
9 expressing that in terms of the goal that we were looking
10 for from this group that would convene itself.

11 MR. MEYERS: All right. We do have a point
12 person identified by General Counsel Cindy Marlette. It's
13 Michael Bardee. And Michael's phone number is --

14 MS. MARLETTE: He's smiling.

15 MR. MEYERS: Yes, he likes it. (202) 502-8068.
16 And should the expressions of interest to participate come
17 to you, Mike?

18 MR. BARDEE: That's correct, yes.

19 MR. MEYERS: Good. Then let's move on. We
20 understand that down in the MARC commissioners only
21 conference that you all had in San Antonio recently, you've
22 done a little planning for today's session in case we got
23 through the process issue. And does anybody else have any
24 items that they would like to raise to our Chairman and
25 Commissioner Brownell?

1 MR. NELSON: Yes. This is Bob Nelson again. I
2 wasn't in San Antonio, but several other commissioners were.
3 And I think there's probably a good reason that we can bring
4 up the RSC/MSE issue here if it's appropriate, and I think
5 it is. I think there's a lot of good discussion there
6 revolving around the issue of whether or not we need to
7 create two different entities with two different
8 bureaucracies and trying to coordinate the two together.

9 I think I'll have Dave and Judy and Bill Hadley
10 speak. And I think there's some agreement perhaps that
11 maybe we can do this through one entity, and I'll turn it
12 over to them.

13 (Pause.)

14 MR. MEYERS: Do we still have a call here?

15 VOICE: Missouri is still here. We're talking
16 about commissioners that were in San Antonio.

17 COMMISSIONER BROWNELL: Okay. We're going to
18 need to remind everybody to please give your name before you
19 begin to speak because our court transcriber is having more
20 than a challenge here.

21 MS. JONES: This is Judy Jones in Ohio. We have
22 filed comments on this issue, and I believe the point we're
23 at is that we are waiting for some response back from the
24 discussions at MARC, and I don't believe that we have those
25 documents back yet. And this would be relating to comments

1 that MARC might be filing a bit later.

2 COMMISSIONER BROWNELL: For those of us -- it's
3 Nora -- who weren't at MARC, it may be just a little
4 executive summary of what the discussion was.

5 MR. HADLEY: This is Commissioner Hadley. The
6 intent of most of what the dialogue was was to try to
7 formulate two things: One, a deeper understanding of
8 commissioners that were able to participate in that
9 discussion of exactly the implications and the issues
10 surrounding this whole discussion of RSCs and MSEs, and
11 secondly, to try to craft together some semblance of a
12 flowchart that would help instruct our thinking out loud
13 onto a paper.

14 The intent was to follow that up, particularly in
15 note of the NARUC opportunity coming up in D.C. with the
16 panel that FERC is putting together so that we could have
17 some real constructive ideas to lay out at that point.

18 The dialogue tried to find similarities and
19 differences between the MSE idea of the National Governors
20 Report, what we saw in the NOPR and what state commissions
21 think might be necessary to effectuate such a plan. And so
22 really the dialogue kind of centered around the common
23 issues.

24 Several states had different ideas that were put
25 forward on paper prior to our meeting, and we look for

1 common issues among those. And what we found that I guess,
2 Nora, just in the broadest sense, was that there was an
3 awful lot more of mutual understanding of this process after
4 our discussion and much fewer differences.

5 Now critically those differences will be needing
6 to be addressed. But we're looking forward to internally
7 having that dialogue and having something much more
8 substantive to put on the table at the D.C. conference with
9 NARUC.

10 MR. MEYERS: Other comments on this? For
11 example, have you discussed funding of RSCs?

12 MR. NELSON: Again, this is Bob Nelson. And
13 again, I was in San Antonio and I think it was discussed
14 there. We had talked previously about having a MISO tariff
15 which would allow for funding of RSC activity and presumably
16 other RTO tariffs as well.

17 I think there was some dissention about that
18 issue, if I'm not mistaken, some disagreement. And we in
19 Michigan would support that concept.

20 MR. MEYERS: So this is a small add-on to the
21 existing tariff that funds the MISO and the small add-on
22 would fund the RSC as well. Is that right?

23 MR. NELSON: That's correct.

24 MS. JONES: This is Judy Jones in Ohio. Yes,
25 there was discussion. There was a lot of discussion, and

1 there was certainly a lot of different ideas thrown out by
2 different states. There certainly was not great agreement or
3 consensus about the issues, so that's still out on the
4 table.

5 MR. MEYERS: Did you all discuss whether there
6 would be one or two such entities, and if so, how they might
7 be linked? For example, an executive committee link?

8 MS. JONES: Actually, that's another area that
9 was discussed, and I think that there were several charts
10 which Commissioner Hadley referred to, and we have I believe
11 merged what we considered the best ideas and consensus
12 ideas, and that chart will be coming out.

13 MR. MEYERS: Okay.

14 COMMISSIONER BROWNELL: So what I'm hearing is
15 that these are ideas that you're exploring. Various teams
16 are going to develop the thoughts further for some
17 discussion at NARUC.

18 MR. SVANDA: This is Dave Svanda. I was in San
19 Antonio but unfortunately missed most of this conversation
20 because I was in and out of the room working on some
21 telecommunications things.

22 But I think, Nora, that's the summary that I
23 guess assembled in my head following discussions with the
24 other people who actually participated in the room. It's
25 unfortunate that not either Diane Munz or Susan Weefhalder

1 on this call, because they've been coordinating the attempt
2 to draw all of the different perspectives together. And it
3 is very much still a work in progress on the issues that
4 have been thrown out so far.

5 I think there is a recognition that between now
6 and the NARUC meeting February that a lot of conference call
7 and e-mail type of work needs to be done on this issue. And
8 there is hope that the fairly detailed discussion that's
9 planned at NARUC on the matter will finally bring us all
10 together.

11 MR. MEYERS: Okay. Is there a need to discuss
12 this further here today?

13 (No response.)

14 MR. MEYERS: Does that about wrap that one up?

15 (No response.)

16 MR. MEYERS: Okay. What else might we want to
17 talk about here this morning?

18 MR. NELSON: This is Bob Nelson again. I think
19 if it's appropriate we would like to at least discuss to the
20 extent we can the MISO market rules in Docket 03-35 and
21 their connection with SMD.

22 Our staff has reviewed those proposed market
23 rules. We are filing comments and in general support of
24 what MISO has filed, because we think they are largely
25 consistent with the SMD proposals, and we think even if SMD

1 is delayed beyond the initial schedule that the MISO market
2 rules should forge ahead. I'll throw that out for others to
3 discuss as well, but it's something we feel strongly about
4 and I think that the FERC can go ahead and advance even in
5 the absence of progress on SMD.

6 CHAIRMAN WOOD: Let me just address that. We're
7 intending to put out our whitepaper of kind of the answers
8 to all the questions that we asked and all the comments that
9 we heard back in April of this spring as we anticipate. The
10 final rule will come out later.

11 But I think the salient point is that, at least
12 our take on what the best answers are, based on everybody's
13 input over the past several months, would come out actually
14 in April. That's really driven, quite frankly, but a lot of
15 what I heard -- and a lot of you were there, Bob, for
16 example, David -- when we were at the MISO meeting last
17 month that the parties moving forward really needed the
18 guidance as to what if anything FERC was going to do on a
19 number of discrete issues.

20 And so I hope that by moving forward with that in
21 April we can get some certainty earlier rather than later.

22 MR. NELSON: On the whitepaper, is that going to
23 be just a summation of where the comments are to this point
24 and further guidance as to how the final rule might look?

25 CHAIRMAN WOOD: I think it could take a number of

1 forms, but I think, yeah, that's pretty much it. Here was
2 the issue. Here's what the parties said, and here's what we
3 learned at the technical conference, and here's what we
4 learned on the outreach, and here's what, you know, the
5 smart people in the North said and the smart people in the
6 West said, and et cetera. And then here's what we think and
7 here's what we want the final rule to have.

8 That's what we're anticipating the whitepaper
9 will be. Similar to what we had last year in the NOPR
10 phase.

11 MR. NELSON: Right.

12 CHAIRMAN WOOD: Prior to the NOPR, we had a
13 similar paper which allowed us to really get one last round
14 of input from people before we put the ink to the paper.

15 COMMISSIONER BROWNELL: Perhaps I think some
16 emphasis on some regional distinctions.

17 CHAIRMAN WOOD: Yes. And kind of saying now that
18 we've had pretty much a docket or dockets from the entire
19 country now coming through here for RTOs, what have we
20 learned from that as to what regional variations mean? And
21 what issues really do lend themselves, specific issues lend
22 themselves to more of a regional treatment without
23 jeopardizing the benefits of having a standardized approach?

24 And we found out, quite frankly, that there are a
25 number of those issues that you can have variance on and not

1 really do damage to, you know, a coherent marketplace.

2 MR. HISER: We've got clarifying questions from
3 staff. Mick Hiser. I have a question. Are you suggesting
4 then that FERC will not respond to the MISO request until
5 this whitepaper comes out?

6 CHAIRMAN WOOD: No. We anticipate -- the request
7 that was filed right around Christmas you're talking about?

8 MR. HISER: The recent one. The market rules.

9 CHAIRMAN WOOD: Yes. We anticipate moving
10 forward per the parties' request from timeframe.

11 MR. HISER: And we would certainly urge you to do
12 so. As you well know, the MISO PJM, which is the linchpin
13 of Midwest market development, is hinging upon getting the
14 Midwest market up and running.

15 CHAIRMAN WOOD: I heard that loud and clear when
16 I was out there in December. It is scheduled for
17 consideration by the Commission on February 20th.

18 MR. HISER: Excellent. We just want to reiterate
19 it.

20 CHAIRMAN WOOD: Thank you.

21 MR. HISER: I don't know if another issue is
22 related to that, but I think it's worth noting that the
23 whole PJM/MISO --

24 MR. MEYERS: And who is speaking please?

25 MR. HISER: This is Nick Hiser. I'm sorry.

1 Michigan. The MISO/PJM single market is absolutely
2 critical, as you well know, with respect to the
3 configuration concerns in the Midwest, and we're relying
4 heavily upon that.

5 We have been supportive of that effort and
6 certainly success in the Midwest PJM single market
7 initiative will make that work.

8 MR. MEYERS: Any further comments on this matter?

9 (No response.)

10 MR. MEYERS: All right. Then we can move along
11 to another matter if somebody has one to bring up to us here
12 today.

13 (No response.)

14 MR. MEYERS: Anything further from anybody?

15 MR. NELSON: Ed, this is Bob Nelson. We hate to
16 monopolize here, but since you're holding the microphone
17 open, we thought we'd spend a few minutes about some pending
18 dockets that I think are somewhat interrelated with the ones
19 that Dave Hadley was talking about in the sense that they
20 affect the future of AEP, and those are the hold harmless
21 dockets and the lost revenues dockets still pending before
22 the Commission.

23 And we think we would advance our position in
24 those cases and other parties have as well. We didn't want
25 to hold up progress on those dockets for Commissioner

1 Hadley's proposal. And we want to submit that that should
2 not be done; that those dockets are proceeding ahead under
3 various schedules set by the law judges. And we don't want
4 to interfere with that schedule.

5 At the same time, those are very significant
6 issues to Michigan. There's a lot of revenue at stake, and
7 we think the FERC's order from last July 31st should be
8 followed through in terms of holding Michigan and Wisconsin
9 harmless.

10 MR. MEYERS: Any further comments on this?

11 (No response.)

12 MR. MEYERS: I think we're just getting
13 acknowledgement that we do have these cases here before us,
14 and that's about as far as we can take it at this point.

15 We've covered the issues that we've heard that
16 you all would like to discuss. However, if there's any
17 other matter, we'd be glad to entertain it. Anything
18 further, or can we just call this meeting to a close?

19 (No response.)

20 MR. MEYERS: It looks like we can wrap up. I
21 certainly want to thank everybody for participating and
22 we're glad we could be responsive to you on a short notice,
23 and anytime further that we can be of help, please let us
24 know. Any other further comments?

25 MR. SVANDA: Ed, this is Dave Svanda. Pat and

1 Nora, you would be interested to know that first time new
2 mom Laura has joined us while we've been in the
3 conversation. And I don't know if you guys had a chance to
4 talk to each other.

5 COMMISSIONER BROWNELL: Congratulations.

6 MS. CHAPPELLE: Thank you for the card, all.

7 CHAIRMAN WOOD: Yes. Congrats, Laura.

8 MS. CHAPPELLE: I'm sleepy but I'm back.

9 COMMISSIONER BROWNELL: Well, good for you. We
10 are delighted. We hope that pictures will be on the Web
11 site soon, if they're not there already.

12 We would also add that Commissioner Massey shares
13 the interest, would have been here. As you know, we split
14 up the meeting. Since we're ending a little early,
15 obviously he won't be here. But we'll get him briefed on
16 what transpired, and he sends his best.

17 MR. MEYERS: Thank you all very much. Have a
18 good day.

19 (Whereupon, at 10:56 a.m. on Tuesday, January 14,
20 2003, the State-Federal Midwest Regional Panel Discussion
21 Teleconference was adjourned.)

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